

FIRST REGULAR SESSION

# SENATE BILL NO. 522

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1930S.02I

## AN ACT

To repeal sections 198.032, 198.526, and 198.527, RSMo, and to enact in lieu thereof four new sections relating to long-term care facilities, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 198.032, 198.526, and 198.527, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 198.032, 198.526, 198.527, and 198.545, to read as follows:

198.032. 1. Nothing contained in sections 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical, social, personal or financial records of any resident in any facility, except when disclosed in a manner which does not identify any resident, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

- (1) The department or any person or agency designated by the department;
- (2) The attorney general;
- (3) The department of mental health for residents placed through that department;
- (4) Any appropriate law enforcement agency;
- (5) The resident, the resident's guardian, or any other person designated by the resident; and
- (6) Appropriate committees of the general assembly and the state auditor, but only to the extent of financial records which the operator is required to maintain pursuant to sections 198.088 and 198.090.

2. Inspection reports and written reports of investigations of complaints, of substantiated reports of abuse and neglect received in accordance with section 198.070, and complaints received by the department relating to the quality of care of facility residents,

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

shall be accessible to the public for examination and copying, provided that such reports are disclosed in a manner which does not identify the complainant or any particular resident. Records and reports shall clearly show what steps the department and the institution are taking to resolve problems indicated in said inspections, reports and complaints.

3. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record and maintain a hotline caller log for the reporting of suspected abuse and neglect in long-term care facilities. Any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording. The department shall in all cases attempt to obtain the name of any person making a report after obtaining relevant information regarding the alleged abuse or neglect. The department shall also attempt to obtain the address of any person making a report. The identity of the person making the report shall remain confidential.

**4. The central registry maintained by the department shall differentiate between complaints received under this section and the self-reporting of incidents to the central registry by a facility under section 198.070. Reports issued by the department shall make a clear distinction between the various sources of information gathered by the central registry.**

**5. The department shall record electronically and maintain a hotline caller log for the reporting of complaints by a facility regarding an ongoing or previous inspection survey. These recorded reports may be used by the facility or the department in all proceedings under section 198.545.**

198.526. 1. Except as provided in subsection 3 of this section, the department of health and senior services shall inspect all facilities licensed by the department at least twice each year. Such inspections shall be conducted:

- (1) Without the prior notification of the facility; [and]
- (2) At times of the day, on dates and at intervals which do not permit facilities to anticipate such inspections;
- (3) By an inspector who has never been employed by the facility or owner of the facility being inspected. Such requirement may be waived by written consent of the facility or a representative of the ownership; and**
- (4) By an inspector with substantial expertise in or, if applicable, having a proper license for the area or matter being inspected.**

2. The department shall annually reevaluate the inspection process to ensure the requirements of subsection 1 of this section are met.

3. The department may reduce the frequency of inspections to once a year if a facility is found to be in substantial compliance. The basis for such determination shall include, but not be limited to, the following:

- (1) Previous inspection reports;
- (2) The facility's history of compliance with rules promulgated pursuant to this chapter;
- (3) The number and severity of complaints received about the facility; and
- (4) In the year subsequent to a finding of no class I violations or class II violations, the facility does not have a change in ownership, operator, or, if the department finds it significant, a change in director of nursing.

4. Information regarding unannounced inspections shall be disclosed to employees of the department on a need-to-know basis only. Any employee of the department who knowingly discloses the time of an unannounced inspection in violation of this section is guilty of a class A misdemeanor and shall have his or her employment immediately terminated.

198.527. To ensure uniformity of application of regulation standards in long-term care facilities throughout the state, the department of [social services] **health and senior services** shall:

(1) Evaluate the requirements for inspectors or surveyors of facilities, including the eligibility, training and testing requirements for the position. Based on the evaluation, the department shall develop and implement additional training and knowledge standards for inspectors and surveyors;

(2) Periodically evaluate the performance of the inspectors or surveyors regionally and statewide to identify any deviations or inconsistencies in regulation application. At a minimum, the Missouri on-site surveyor evaluation process, and the number and type of actions overturned by the informal dispute resolution process **under section 198.545** and formal appeal shall be used in the evaluation. Based on such evaluation, the department shall develop standards and a retraining process for the region, state, or individual inspector or surveyor, as needed;

(3) In addition to the provisions of subdivisions (1) and (2) of this section, the department shall develop a single uniform comprehensive and mandatory course of instruction for inspectors/surveyors on the practical application of enforcement of statutes, rules and regulations. Such course shall also be open to attendance by administrators and staff of facilities licensed pursuant to this chapter.

**198.545. 1. Facilities licensed under chapter 198 shall have the opportunity to contest through an informal dispute resolution process statements of deficiency received as a result of an inspection or complaint investigation as conducted under sections 198.026 and 198.532. Such contests shall be heard and decided by an**

impartial hearing officer.

2. The informal dispute resolution process shall be conducted in a fair and impartial manner under the direction of a hearing officer. Hearing officers shall be licensed lawyers and other non-lawyer professionals who have experience or who have completed training in the areas of mediation or arbitration.

3. As part of a plan of correction, facilities licensed under chapter 198 shall provide a written request to contest statements of deficiency received as a result of an inspection or complaint investigation as conducted under section 198.026. The department of health and senior services shall provide notice of the receipt of the request for the informal dispute resolution process and include such notice with the facility for notice of receipt of the plan of correction. The process for such contests shall be conducted within the following guidelines:

(1) The requests for the informal dispute resolution process shall not delay the formal imposition of remedies;

(2) The proceedings shall be recorded electronically. A transcript only shall be made when requested by the facility or the department;

(3) The decisions issued by the panel may reverse or otherwise modify the formal imposition of remedies;

(4) The hearing officer shall consider only the information that has presented in rendering a decision. The department and its' staff expressly are prohibited from attempting to influence the hearing officer except through the department's presentation at the hearing; and

(5) The decisions shall be issued by the officer within a reasonable time of the hearing.

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